

WASHINGTON DEPARTMENT OF ECOLOGY

RESPONSE TO PUBLIC COMMENTS

**EQUILON ENTERPRISES LLC – PUGET SOUND REFINING COMPANY
NPDES PERMIT WA 000294-1**

January 3, 2002

Public notice for issuance of the Equilon NPDES Permit was published on August 8, 2001. Comments were received by Ecology.

Changes will be made to the permit, where appropriate, to improve clarity and address the comments. Changes to be made are discussed in this response to comments. Because the permit changes are more restrictive than the original draft permit, issuance does not require a second public comment period. A copy of the permit will be sent to all interested parties upon issuance.

A copy of this response to comments is being sent to each individual or group who provided written comment and to any person who indicates their desire to have a copy upon issuance. It includes Ecology's responses to written comments received. As a time and space saving measure, comments have been compiled and summarized. The original comment letters are available for public review at Ecology's office in Lacey. Anyone interested in obtaining a copy of the full text of the comments or of a particular comment should call Nancy Kmet at (360) 407-6941.

- *Comment from Swinomish Indian Tribal Community*

The tribal community is concerned about shellfish beds on reservation tidelands. Their concern is whether or not the current water quality standards are stringent enough to protect their tribal members whose subsistence use gives them a much higher consumption rate than used to calculate contaminant risks within the general population.

Ecology published a draft analysis of fish consumption rates in March 1999. Ecology Publication 99-200 is entitled "Draft: Analysis and Selection of Fish Consumption Rates for Washington States Risk Assessments and Risk Based Standards". No decisions have yet been made on revising the consumption

factors used to develop Washington State Water Quality Criteria. The Equilon discharge was evaluated using existing criteria. The issue of subsistence use cannot be addressed in a single NPDES permit. Your concern regarding fish consumption rates and subsistence use has been forwarded to Ecology's Water Quality Program staff that is responsible for the update of the water quality standards.

- *Comment from Swinomish Indian Tribal Community*

The tribal community is concerned about the presence of bioaccumulative toxins in shellfish consumed by tribal members at subsistence rates. They are concerned about the levels of arsenic and TCDF in shellfish in Padilla Bay. They have concerns that cadmium, PAHs and Fluoranthene were found to exceed sediment screening levels in a previous study. They believe that the permit should provide adequate testing and controls for bioaccumulative toxins. They would also like additional sediment testing be conducted prior to the issuance of this permit in order to be used to set effluent levels and permit requirements.

PBT Concerns

In January 2001 Ecology submitted a proposed strategy on Persistent, Bioaccumulative and Toxic Substances (PBT). As part of that strategy, Ecology proposed to continually reduce, and where possible, eliminate releases of PBTs into the environment. The Legislature granted Ecology some funding to implement this proposal. Nine chemicals were identified in the strategy. Ecology is also screening and prioritizing an additional 56 chemicals which meet a "persistent, bioaccumulative, and toxic" criterion developed by EPA. A draft PBT priority list for Washington State was published in the fall of 2001 for public review and comment. Because of your concerns we would encourage you to be involved in this public process.

Shellfish Concerns

Ecology's Water Quality Program briefly considered downstream shellfish testing when a policy was developed for implementing the federally mandated human health criteria. Because of the costs and the potential impacts on very small dischargers it was decided to depend on effluent monitoring to determine compliance. Ecology considers the aquatic water quality standards and the human health criteria to be protective. Ecology may consider downstream shellfish monitoring in the future for individual permits after an acceptable indicator species has been identified and baseline data have been established. This issue may be brought up again during the water quality standards triennial review process.

The Department of Health Office of Toxic Substances published a report in May of 1996 entitled "Puget Sound Ambient Monitoring Program: 1992 and 1993 Shellfish Chemical Contaminant Report". The toxics studied included 6 metals,

phenols, substituted phenols, low and high molecular weight aromatics, chlorinated aromatic hydrocarbons, chlorinated semi-volatiles, halogenated ethers, phthalates, nitrogen compounds, PCBs, pesticides, and miscellaneous compounds. A collection point was located off of March Point. The metals monitored for included arsenic, cadmium, copper, lead, mercury and zinc. The metals levels in the shellfish tissue collected off of March Point were at low levels slightly above or below the average metals concentration from all of the sample stations. Several organics were detected at low levels within the March Point tissue samples. The organic compounds detected included 2-methyl phenol, benzoic acid, benzyl alcohol, and di-n-butyl phthalate. Laboratory method blank samples were found to be contaminated with 2 organic compounds one of which was di-n-butyl phthalate. A total of 9 organic compounds were detected with varying degrees of consistency in the tissue collected from the 20 sample locations. Benzoic acid was detected in tissue form each sample location. Health screening values were compared to the tissue concentrations at each location. Health screening values were not exceeded at the March Point sampling location. The only Puget Sound location studied that had exceedances of health screening values was Eagle Harbor.

The Department of Health has not done anymore comprehensive shellfish testing since the 1992 – 1993 testing was completed. Ecology has done sporadic shellfish sampling in Puget Sound but no recent data is available for the March Point area.

The National Oceanic and Atmospheric Administration (NOAA) has tested mussels and Oysters annually from 1986 until 1994. In 1994 sampling was reduced to one sampling event per every two years. The results from these studies can be obtained from NOAA. A paper entitled “Long-term Contaminant Trends and Patterns in Puget Sound, the Straits of Juan de Fuca, and the Pacific Coast” by Alan J. Mearns was submitted for publication in the Proceedings, Puget Sound Research 2001, Puget Sound Water Quality Action Team. A copy of the paper has been placed in the Equilon NPDES permit file and is available on request.

Sediment Concerns

It is not practical to require additional sediment monitoring prior to issuing the NPDES permit because it would require Ecology to write an administrative order and would delay the permit by more than a year. Ecology believes that issuing a new permit with comprehensive changes is the better alternative. The Sediment Unit in Toxics Cleanup Sediment Program will assist the Industrial Section in review of the data and will help decide a course of action if sediment contamination is found. As noted in the fact sheet the only sediment standard exceeded in the previous study was for bis (2-ethylhexyl) phthalate. There were some detectable metals and PAHs but they did not exceed the sediment standards. The minor exceedance noted in the previous study was not high enough to put Equilon on a priority list for further modeling and investigation.

Ecology's Sediment Unit prioritizes its workload and concentrates on the worst contamination first.

- *Comment from Swinomish Indian Tribal Community*

The tribal community is concerned that the effluent limits are higher in the proposed limit than in the current permit and about the impacts these higher limits will have on the environment, tribal and treaty resources and the health of tribal members. They see no need to increase effluent limits since the facility has been meeting the limits in the current permit.

Ecology writes NPDES permits based on the authority of the federal Clean Water Act (CWA) and state law (Chapter 90.48 RCW Water Pollution Control). Federal effluent guidelines provide the basis for technology-based NPDES permit effluent limitations for most major industries including the refineries. These discharge limits are based upon the type of process units at the facility and the expected quantity of crude throughput. The permit limits were increased from the last permit because of the increasing crude throughput at the Equilon refinery.

In addition to an analysis of technology based limits the permit's development must include a water quality based analysis. Effluent data is analyzed to ensure that the discharge will not exceed either human health criteria or aquatic life criteria. Water quality based limits are imposed if the statistical analysis determines there is a potential that criteria will be exceeded. Ecology considers the aquatic water quality standards and the human health criteria to be protective.

- *Comment from Swinomish Indian Tribal Community*

The tribal community would like to be notified of any spill with a potential threat to reach tribal resources and also be notified in the event that shellfish protection notifications are made. The tribe is developing a hazardous materials and emergency response capability and would like to have direct notification in the event of spills or unauthorized sanitary system discharges so they can be effective in protecting tribal resources. They would like to be included in the notifications developed by Equilon as part of the permit requirement S2.I.

Ecology understands your concern regarding your resources in the event of a spill. We would suggest that you discuss this issue directly with the appropriate Equilon representative. Each refinery has a Geographic Response Plan (GRP) which identifies the responses and the geographic areas where spill cleanup efforts would be focused. These plans are approved by a group of agencies including Ecology. The tribe might consider focusing their efforts on areas of concern which may not be included in Equilon's GRP. Joe Haley is the Equilon

contact in the Oil Spill Group. His telephone number is (360) 291-1707. If you need some assistance in setting up these discussions Ecology would be willing to help coordinate the effort. In a conversation with Equilon representatives they indicated a willingness to discuss these issues with the tribe. Ecology will add the tribal community number to the NPDES permit in the event of an unauthorized sanitary discharge.

- *Comment from Swinomish Indian Tribal Community*

General Condition G3 summarizes the conditions that would allow Ecology to modify, revoke, reissue or terminate the permit. Those conditions include new information and or new or amended state or federal regulations. The tribal community believes this requirement should specifically include information regarding potential health impacts on tribal members engaging in subsistence use of shellfish from tribal or treaty resources. The permit condition should also include changes in tribal regulations where reservation resources are impacted including any future tribal water quality standards enacted during the term of the permit.

Ecology believes that the general condition already grants Ecology the right to reopen the permit in the event we are provided new information regarding any potential health effects on tribal members. General conditions are conditions included in every NPDES permit and are applicable to all NPDES permits. They are based on or are direct quotes of requirements included in the federal regulations. This condition was written to be broad in scope to cover a wide range of situations. We do not believe it is necessary or desirable to change this condition to be more specific.

- *Comment from ReSources*

ReSources had several comments regarding the effluent limitations and monitoring requirements for several parameters. They were concerned about the limitations for chromium being so high and the monitoring frequency low. They believe that the monitoring frequency for fecal coliforms is too low given the vicinity of the discharge to the frequently used beach. They are concerned that the grab samples taken by Equilon to measure temperature will not capture maximum effluent temperatures and would prefer that the facility continuously monitor the temperature. They are concerned that the permit limit of pH 6 – 9 does not adequately protect the marine standard for estuarine waters which is 7 – 8.5 considering the large volume of effluent that is discharged.

Chromium

Effluent limits for chromium are included in the permit because federal regulations require that limits be included for all parameters included in federal effluent guidelines. Chromium historically was used for cooling at refineries

however it has been eliminated from use because of the availability of more environmentally acceptable alternatives and ultimately because federal regulations banned it from use. Federal regulations allow that in some cases limitations and monitoring can be removed from permits if the source has been completely eliminated. Although the historical source has been removed chromium is found in crude oil and continues to be present at very low concentrations. We have several years of data at the Equilon refinery that confirms chromium is either non-detectable or present in the effluent at very low concentrations. The most recent Ecology sampling inspection showed total chromium present at 1.5 micrograms per liter. The discharge has been determined to have no potential to exceed water quality criteria. Our preference would be to remove the limit entirely however federal regulations do not allow us that flexibility. Our solution to this dilemma was to leave the technology-based limit in the permit and reduce monitoring to the minimum required.

Ecology also verifies the concentration of chromium in the discharge when we conduct annual sampling inspections. We do not believe that leaving the limit in is a risk to the environment.

Fecal Coliform Monitoring

Equilon has demonstrated the capability to meet the coliform limit on an ongoing basis. Equilon has also done studies to show a correlation between the level of chlorine and the effective coliform kill so that they are assured that they meet their fecal coliform limits on an ongoing basis. If you review the information given in the fact sheet you will note that of all the parameters given consideration for monitoring reduction for good performance, it had the best compliance rate. Total chlorine residual is monitored daily and is considered a surrogate for coliform testing. Fecal monitoring is indeed somewhat inexpensive however the test is very labor intensive. Given their history of compliance since the upgrade of the treatment facility and the fact that total chlorine residual is monitored daily Ecology believes that weekly testing is adequate to demonstrate compliance.

Temperature

Equilon monitors temperature by taking grab samples of the final pond and upstream sampling points approximately every four hours. The proposed permit states the method of monitoring to be daily grab or continuous monitoring which gives Equilon the option of using either method. The maximum volume of the final pond is approximately 7.4 million gallons. With this volume, wide temperature swings in the effluent are very improbable. Temperature changes vary gradually and daily grab monitoring should be adequate to document those changes. Equilon also has the ability to cool wastewater as it enters the biological treatment system in case they have a surge of very hot or colder than usual wastewater, which could impact the wastewater treatment microorganisms. This system's purpose is to protect the biomass in the treatment system but it also would serve to moderate the temperature of the final effluent. They have never had to use the system although it continues to be available. Ecology is

confident that a daily grab sample adequately represents the temperature of the final effluent.

pH

It has been Ecology's field experience that the buffering capacity of marine water is very large and that pH impacts cannot be measured in the receiving environment when discharges meet the technology-based pH standards of the range of 6 - 9. We believe this standard is protective of the receiving environment.

- *Comment from ReSources*

ReSources is concerned that the stormwater monitoring may not be adequate on site. They suggest that additional outfalls (004, 014, and 017-025) be monitored twice per year because they have pipelines and/or railroad lines in the drainage. They also suggest that the monitoring points identified in the permit have increased frequency of monitoring from semi-annual to monthly.

Ecology made the decision to continue monitoring for those outfalls that have industrial activity, that had any recent spill activity, or if the existing data suggested that there was a problem with the discharge quality. We believe these were acceptable criteria for this decision. The data collected in the previous permit for the outfalls mentioned above show that the pollutant loadings are at low levels with the exception of Outfall 002 which had a relatively high TSS content. Even though the activities in the basin do not meet the definition of industrial activity we felt it deserved further monitoring and attention in the Pollution Prevention plan. The Pollution Prevention Plan specifically included a requirement to address this outfall. Ecology believes these requirements are protective of the environment.

- *Comment from ReSources*

ReSources was pleased to see Pollution Prevention Studies required in the NPDES permit however suggested that there was no language in the permit clearly requiring that the prioritized actions in the plan be implemented. They also request that the process changes that result in no production of a pollutant be given the highest priority rather than media transfer or treatment.

The permit includes several statements related to the enforceability of the Pollution Prevention Condition. I have reiterated them below.

- The plan shall include a schedule for implementation of each selected opportunity. The Permittee is expected to establish reasonable priorities

and schedules for implementation to achieve the greatest reduction in pollutant quantity and toxicity, as well as for management and fiscal necessity.

- The Permittee shall implement selected pollution prevention opportunities according to the timeframes specified in the plan or any plan modifications thereof.
- The objective of the pollution prevention plan is to identify pollution prevention opportunities and implement those opportunities that are technically and economically achievable.
- Plans or portions of plans incorporated into the pollution prevention plan become enforceable requirements of this permit.
- Opportunities determined to be technically and economically feasible will be considered as known, available, and reasonable and therefore are required to be selected and scheduled for implementation.

We believe these statements make the approved Pollution Prevention Plan enforceable.

Condition S.4.D includes the statement that follows. In evaluating and selecting pollution prevention opportunities, the Permittee shall give preference first to those that eliminate, avoid, or reduce the generation of water pollutants at the source, second to those that recycle or reuse the pollutants, and third to those that provide at-source or near-source treatment to remove pollutants or render them less toxic or harmful. Our first order of priority is source reduction or elimination.

- *Comment from ReSources*

ReSources is concerned that there does not seem to be any maintenance, inspection, or monitoring in the NPDES permit for the pipeway areas where there is a potential for discharges of product.

Equilon's product and crude pipelines are regulated by the Coast Guard and by Ecology's Spill Prevention Program. The Coast Guard requires an annual pressure test of the pipelines that transport hydrocarbon between the refinery and the refinery's dock. The pipelines are tested at 1.5 times the maximum allowable working pressure. Also, Ecology requires the pipelines that transport hydrocarbon between the refinery and the dock to have a leak detection system. In addition, refinery security personnel visually inspect the pipelines between the refinery and the dock on a daily basis and report any abnormalities.

Ecology requires the refinery to inspect all hydrocarbon piping per the API 570 standard. This requires thickness readings be taken on piping to establish corrosion rates. The established corrosion rates lead to a required physical inspection frequency. These thickness tests are repeated periodically to provide updated corrosion rate information. Because of the extensive testing requirements through other authorities, there is no need to add those requirements in the NPDES permit.

- *Comment from ReSources*

ReSouces believes that two grab samples are not adequate and will not provide a representative sample for dioxin in the API sludge.

Ecology is interested in the relative range of dioxin that is present in the sludge because data suggests that it concentrates in the sludge and little remains in the effluent. We believe that 2 samples are adequate for this purpose especially considering the cost of dioxin monitoring.

- *Comment from ReSources*

ReSources objects to granting dilution zones for toxic and bioaccumulative toxics particularly in areas such as in the discharge location, which provide prime salmon rearing and migrating habitat, herring spawning habitat, and habitat for minke and orca whales. These whales are also under consideration for an endangered species listing and are considered to be the most contaminated mammals in the world. ReSources questions how Ecology made the determination that no damage would occur to sensitive important habitat or the ecosystem.

The Department of Ecology relies on the water quality standards to assure that all aquatic resources are protected. These water quality standards include criteria for the protection of aquatic life, human health and sediment quality. Permits comply with these standards. Permits are often issued with mixing zones, as allowed within the water quality standards, with the understanding that exceeding the criteria within these small areas around the point of discharge will not cause the kinds of problems that you have identified.

Several years ago, Ecology recognized that water quality was still impaired despite increasingly stringent requirements on point source dischargers. We believe the solution lies in control of diffuse and currently unregulated discharges. The TMDL studies completed to date have reinforced our belief that most water quality problems now are caused by "nonpoint" sources. Ecology has placed more resources in controlling these sources.

Point sources will still be required to demonstrate continued decreases in pollutant discharges even as we approach the practical levels of pollutant treatment. This permit, for example, requires the permittee to implement a program of pollutant reduction by controlling the sources of the pollutants within the facility. On the Agency level, the PBT initiative (see page 2) will examine toxic pollutant control on a broader scale. We encourage you to participate in this initiative.

- *Comment from ReSources*

Resources is concerned about the lack of monitoring required for construction activities sites and their respective drainage basins. They also believe that there is the possibility of soils contamination from past practices on the construction site that the area soils should be tested for contamination prior to the start of construction.

The NPDES program does not regulate construction activities other than the stormwater which might be discharged. Construction projects are reviewed and approved within the local building permit process. When Equilon adds a new piece of equipment or constructs a new building they do soil testing to ensure that they do not have any cleanup issues. The proposed sites for the new process units are largely land areas that have not been used for industrial purposes. When they construct large buildings or tanks they do soil core sampling to determine the structural adequacy of the soils to handle the building loads. At the same time they test for pollutant parameters to ensure there are no cleanup issues.

- *Comment from ReSources*

ReSources believes that chronic testing should not be delayed until the second year of the permit term and should not be limited to one year of testing. They believe there should be a minimum of 4 chronic testing events per year which could be reduced after 3 years of data but also that it should be reinstated if there is any substantial change in flow or production. They are also concerned that the permit does not protect organisms from the sub-lethal effects, which can reduce fitness and limit reproductive success leading to population level effects. They would also like us to consider using herring instead of top smelt once the protocol is complete.

The permit has many new plan and testing requirements. In order for the company to do a good job in fulfilling these requirements and to give Ecology adequate time to review these plans we need to distribute the new requirements throughout the permit cycle. The chronic testing requirements included in the permit actually are somewhat in excess of the requirements that would result from using the ranking criteria in the Permit Writer's Manual. We believed that several additional tests were necessary because the testing done in the last

permit cycle would not meet today's testing protocols and were not adequate to establish a baseline. Equilon is required to let Ecology know when there may be changes to the pollutants in the discharge and if there is a significant change we would have the option to open the permit and add testing requirements. Minor increases in production and/or flow are not likely to change the characteristics of the wastewater unless there is a process change or a change in the source of the crude oil. Major changes might affect the efficiency of treatment which the facility is required to demonstrate in the Treatment Efficiency Study.

In order to establish a cause and effect relationship between an effluent and adverse effects to living organisms, laboratory tests would need to be available that are approved for regulatory use in permits. Only in a laboratory can conditions be controlled to establish the relationship between an effluent and any adverse effect it might cause. There are no laboratory tests developed for most of the sublethal effects described by the commenter. Any existing test for a sublethal effect would also need to be validated for regulatory use in order to be an enforceable permit requirement.

The standard chronic WET tests all have sublethal endpoints such as growth. Tests with Pacific herring will be ready for regulatory use in a year or two. The herring tests will also have some sublethal endpoints. These are the only tests currently available for use in the NPDES permitting program. We will consider adding herring testing in the next permit cycle.

- *Comment from Equilon – Puget Sound Refining Company*

The draft permit had some incorrect dates in the Summary of Permit Report Submittals and should be changed relative to the permit issuance date.

The dates in the issued permit were corrected.

- *Comment from Equilon – Puget Sound Refining Company*

The permit requires that “In the event of a failure of continuous monitoring equipment hourly grab samples shall meet the frequency requirements”. Equilon believes that they may be in non-compliance if the operator does not discover a pH probe failure and start monitoring effluent pH on an hourly basis. They also believe that the pH of the final pond is very stable because of the large buffering capacity and that actual pH violations are very unlikely. They also take pH measurements across the entire treatment system every four hours. They believe that they should be able to demonstrate compliance with the pH requirement by using the other operational data and not have to depend on grab samples at the effluent when the pH meter probe fails. They suggest adding the language “or other means of demonstrating compliance subject to approval by the department.”

Ecology agrees to add language to the permit allowing the permittee to recommend an alternative subject to the approval of the department.

- *Comment from Equilon – Puget Sound Refining Company*

The permit includes language for Non-routine and Unanticipated Discharges. Equilon notes that if a discharge is indeed unanticipated then by definition they would already have started the discharge before ecology can be notified. They suggest that we remove unanticipated from the title.

Unanticipated does not necessarily mean the permittee does not have time to react to the situation prior to a discharge. The language is permit boilerplate language and Ecology does not plan to change the permit.

- *Comment from Equilon – Puget Sound Refining Company*

Permit Condition S2.G requires the permittee to include in the DMR the calculation and reporting of any monitoring of pollutants in the effluent more frequently than required by this permit. This language should be changed to require such action only for the final effluent as PSRC may use approved test methods for upstream process control that would not be appropriately used for DMR calculations. Otherwise, it is not clear that this applies only to the final effluent.

The permit language states “the effluent” and Ecology considers this to be the final effluent and not any upstream sampling point.

- *Comment from Equilon – Puget Sound Refining Company*

Permit Condition S3.B.3.A requires that the Minimum Level (ML) of detection for 2,3,7,8 – TCDD/TCDF shall be 10 parts per quadrillion or less. Due to matrix interference and other issues, it is possible that a laboratory fully accredited by Ecology to complete Dioxin testing may not be able to reach the ML detection limit. Provisions should be included in the permit to accept alternate ML levels should a fully accredited laboratory be unable to assure an ML this low.

These studies have already been completed at several refineries which have not had problems meeting the minimum levels of detection specified. Ecology does not believe that these levels are unreasonable and does not plan on changing the permit requirement.

- *Comment from Equilon – Puget Sound Refining Company*

Permit Condition S3.B.3.B. requires a minimum Level (ML) of detection for the chlorinated dioxins and furans at 5 parts per Trillion. Equilon believes that due to matrix interference and other issues, it is possible that a laboratory fully accredited by Ecology to complete Dioxin testing may not be able to reach the ML detection limit. Provisions should be included in the permit to accept alternate ML levels should a fully accredited laboratory be unable to assure an ML this low

These studies have already been completed at several refineries which have not had problems meeting the minimum levels of detection specified. Ecology does not believe that these levels are unreasonable and does not plan on changing the permit requirement.

- *Comment from Equilon – Puget Sound Refining Company*

Permit Condition S3.I regarding Construction Stormwater Pollution Prevention specifically refers only to upcoming low sulfur gasoline and diesel projects yet the language is otherwise generic and applicable to any stormwater construction project. PSRC requests that Ecology broaden the language to allow the requirements of this section to be applicable to any future projects, not just the low sulfur fuels projects. Ecology could require the permittee to submit details of the proposed project for Ecology review within 60 days (or alternate time period) prior to construction.

Ecology agrees to make this language more generic to fit other construction activities.

- *Comment from Equilon – Puget Sound Refining Company*

The “under penalty of law” language in General Condition G1.D in the draft permit regarding document certification varies somewhat from that required on EPA preprinted DMR forms. Equilon – Puget Sound Refining Company (PSRC) has historically used the EPA language on our programs that generate DMR reports. PSRC requests that Ecology adjust the permit language to allow for use of either the Ecology or EPA language in permit related submittals. This will reduce PSRCs need to make two different certification statements depending on the audience. A statement “or other language as approved by Ecology” would be sufficient.

The language in the general condition matches the language in 40 CFR 122.22 (d) with the exception that the tense of two verbs was corrected. We do not plan on changing the language.

- *Comment from Equilon – Puget Sound Refining Company*

General Condition G19 regarding toxic pollutants is reportedly a direct reference from 40 CFR 122.41 and includes the following language: “The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time frame provided in the regulations that establish those standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.” In actuality, 40 CFR 122.41 includes language referring to sewage sludge that has been removed from Ecology’s wording as listed in the permit and shown above.

In recent industrial section permits (prior to Equilon PSRC) Ecology has instead used the language from 40 CFR 122.44 (b) (1) that appears to have a more general applicability without modification as follows:

“If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Clean Water Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Department shall institute proceedings to modify or revoke and reissue the permit to conform to the new toxic effluent standard or prohibition.”

This is the same language that appears in other recent industrial section permits issued by Ecology (rather than the language included in the Equilon PSRC permit). As such, Ecology was already directly quoting section 122 for toxic pollutants in recent permits and has since chosen to quote (and then modify) a somewhat different section of the regulations for our permit. It is our belief that the removal of the reference to sewage sludge may obscure the intent of section 122.41 as clarified in section 122.44(b)(2) that specifically refers to toxic pollutants in sewage sludge.

As 40 CFR 122 contains many references to requirements for toxic pollutants, including those of section 122.41 and 122.44, why Ecology has chosen to include only a modified version of 122.41 is unclear. Perhaps this is the rationale behind using references to the entire section in the past.

PSRC understands that we are ultimately responsible for compliance with all language in the federal register. However, specific language pulled into the Ecology permits gives direction to Ecology staff as to the preferred action to be pursued in a given situation. As such, language quoted in the permit is best left unmodified. PSRC believes that it is more appropriate for Ecology to reference all applicable sections of the CFR rather than using

modified sub-sections. If Ecology believes it is beneficial to directly quote the CFR, then PSRC suggests that they use the un-modified 40 CFR 122.44 (as shown above) is more appropriate as this language was used in recent refinery permits. 40 CFR 122.44 requires no modification to fit into the context of an industrial permit.

PSRC requests that Ecology remove this provision from the permit language or, alternately, replaces the modified language from 40 CFR 122.41 with the unmodified and more widely applicable language from 40 CFR 122.44.

Ecology believes that section 40 CFR 122.41(a) (1) is applicable equally to wastewater and sludge. We did not use the language of this section applicable to sludge because sludge has a separate permitting program from wastewater. We used the exact wording that EPA uses as Standard Conditions in their NPDES wastewater permits when we revised our General Conditions.

Your permit won't look exactly like other refinery permits because things change. We modified the standard wording on the advice of our AAG to improve permits and your draft permit was issued with the new improved wording. The reason we chose to include all the requirements of 122.41 was to make it clear to permittees what their requirements were without having to consult the CFRs.

I believe Ecology erred in using 40 CFR 122.44(b) (1) as a basis for a General Condition in previous permits. 40 CFR 122.44 is a directive to the permitting authority on establishing permit limitations and conditions. In general, Ecology tries to avoid placing requirements in permits that are directives to us. I do understand, however, why you prefer this language.

Ecology does not believe 40 CFR 122.44 (Establishing limitations, standards, and other permit conditions) is a section meant to "clarify" Section 122.41 (Conditions applicable to all permits).

Ecology has spent considerable effort in making sure our new General Conditions conform to Federal and State law and regulation. We see no compelling reasons in your correspondence to cause us to return to the old, unclear, and incorrect General Conditions.

- *Comment from Equilon – Puget Sound Refining Company*

Page 13, paragraph 4 of the fact sheet describes some background information for the facility's dry weather flow. Ecology analyzed dry weather flow conditions by sorting flow data and removing all data where rain fell within three and five days of the data point. This sorting was

intended to remove any days that might have stormwater flow to the treatment plant. This analysis indicated a dry weather flow of approximately 3.5 MGD. PSRC has a maximum storm surge tank capacity of approximately 3.6 million gallons. In addition, we have numerous storage basins and tank dikes that are used to store and buffer stormwater events as necessary. It is not uncommon to run-off this water back to the treatment system at rates typically ranging from 200 to 400 gpm. At these rates, stormwater could be introduced into the treatment system for several days or even weeks following a stormwater event. As such, any method that only eliminates days where rainfall fell within three to five days probably includes some stormwater from storage. PSRCs estimate of dry weather flow using two alternate methods was 2.97 and 3.02 MGD.

While PSRC recognizes the assumptions that may introduce uncertainty in our methods of estimation, there are also uncertainties in Ecology's method as mentioned above. As such, PSRC proposes that the most reasonable dry weather flow value to use is somewhere between PSRCs (3.0 MGD) and Ecology's (3.5 MGD) estimate.

Ecology believes that the proposed dry weather flow more accurately reflects the actual dry weather flow of the facility.